



MayaKosha
Healing

**Response to issues raised in preliminary submissions to
Sentencing Council around good character in sentencing:**

Calling to remove good character references for paedophiles in the
sentencing procedures of child sexual abuse cases

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Summary-

Thank you for the opportunity to provide a response-based submission for the review of section 21A(5A) of the Crimes (Sentencing Procedure) Act 1999 (NSW), and other relevant sections, and the common law relating to the use of “good character” in sentencing. By allowing child sexual abuse offenders to use good character references in court proceedings, the grooming strategies of deception and manipulation employed to first access and cause harm to vulnerable persons is replicated in the court of law. This often results in reduced sentences and may be of further assistance to the offender to gain access to further children of whom they may commit offences against. It is therefore imperative to make reforms that increase safety and wellbeing of children, young people and families.

About the Service-

MayaKosha Healing is a trauma specific counselling service founded by Alys McLennan. Clients are mostly referred from Victims of Crime NSW, domestic violence services, child protection and out-of-home-care agencies and from individual vulnerable families. Alys is an accredited mental health social worker and a trauma specific child and family counsellor. She holds two Master’s Degrees in addition to her undergraduate certifications. Alys’ therapeutic work focuses on promoting recovery from abuse, neglect, and crime as well as all forms of trauma, and grief. MayaKosha Healing provides services to vulnerable persons through the tailoring of specialised therapeutic interventions to individual needs founded upon frameworks including neurobiology of trauma, attachment, child development, family systems which are person centred and strengths-based in delivery.

Introduction-

Previous submissions highlighted an array of repercussions for victim- survivors, potential victims and communities, when person's engaging in sexual offences against children receive reduced sentences due to good character references. Submissions identified impacts on victims such as: decreased mental wellbeing, decreased physical and psychoemotional safety, feeling their harm is minimised by the courts, reduced disclosure and engagement with the justice and policing systems, risk of ongoing grooming and abuse, impacts on work or schooling. Research has demonstrated that there is much confusion and disbelief that remains in our Australian society to date (Tucci & Mitchell, 2021), and therefore, early intervention is not a strong safety mechanism that many can rely upon as a buffer against potential, current or ongoing abuse and harm. This means that there is further onus on the policing, therapeutic and justice systems to educate and reduce the likelihood that harm can reoccur.

A preliminary submission as outlined by the Consultation Paper: Good Character at Sentencing (submitted 4 December 2024) indicated that the use of character witnesses in trials dates all the way back to 18th century England. This is a time far from our modern conceptualisations, understandings and research on trauma, abuse and trauma-informed practices. It is imperative that reform in this space is made, so that the dynamic nature of best practice interventions is continuously met. What was appropriate for 18th century England is no longer fit for purpose as it fails to meet the standards of best practice, trauma informed care and does not reflect the vast amount of abuse and survivor related knowledge, all of which raises equity and capacity concerns.

I must reiterate that the impacts of child sexual abuse are lifelong, and includes (not limited to): cognitive, emotional and social difficulties, education disruptions, increases in mood and mental health disorders, increased suicide ideation and suicide or self-harm attempts, safety cuing difficulties, attachment disruptions or risk and substance abuse/ misuse (Briere, & Scott, 2006: Gilbert, 2007). Despite this extensive research, the Australian community is still largely ambivalent towards trusting the disclosures of children about their experiences of child sexual abuse (Tucci & Mitchell, 2021). Therefore, the use of good-character references

- replicates grooming and abuse-exposure behaviours that was of assistance to the offender in the commission of their offences against children and families
- enables pedophiles to engage in further grooming behaviours
- adds to unhelpful societal narratives by increasing the mistrust of victim-survivor accounts
- adds to the risk of harm to children, young people and families
- silences and/or minimises victim-survivor experiences
- depletes the robust nature of the justice system in relation to child sexual abuse offences

Therefore, significant and meaningful reforms around section 21A(5A) of the Crimes (Sentencing *Procedure*) Act 1999 (NSW) is required and of the utmost importance to protect Australian community members.

Key concerns arising from the preliminary consultation paper-

Further concerns have been raised since reading the Consultation Paper: Good Character at Sentencing, submitted 4 December 2024. I continue to stand by all the issues and concerns raised in my preliminary submission (PGC20) and refer the council to this document in addition to the following outlined items.

Item 1: Mischaracterisation of 'first offence-

When referring to an event as a "First offence", this can be misleading due to the nature of sexual based harms and associated foundational behaviours leaving victims more vulnerable to abuse. Sexual offences often commence with grooming-type activities or other risky behaviours leading towards sexual harm.

Grooming behaviours are targeted activities that both reduce a victim's boundaries and defences (making them more vulnerable) and present the offender to communities, families and networks around the victims as a person of trust (Briere & Scott 2006; Salter, 2004). Many sexual offenses go unreported or undetected for extended periods and even years or decades (Laing, Humphreys & Cavanagh, 2013; Salter, 2004). By the time an offender is caught, they may have already committed numerous unsafe sexual based acts. Labelling their actions as a "first offence" disregards the hidden nature of this type of offense and perpetrator predilection, with their past behaviours overlooked despite being integral as it is most likely a pattern of offending, not a one-off event. The term "first offence" further adds to the victim experiences of crime-minimisation, as the complexity, severity and premeditation factors of

the crime are overlooked. It may create an impression that the offense was an isolated lapse in judgment, rather than part of a systematic and predatory pattern, which could influence sentencing outcomes.

Often when caught the incident is not a first offence, as they have likely engaged in grooming and other prior indecent acts or offences without detection (Laing, Humphreys & Cavanagh, 2013; Salter, 2004). This may have been in relation to the victim involved in that instance, or with other parties who are perhaps still unknown to the justice system. These activities may not all be initially recognised as criminal, but they are precedents and foundational activities to the eventual offenses being committed.

Therefore, a lack of detection of a crime when a sex offender is finally snared by the justice system does not necessarily equate to no prior crimes having been committed. Referring to the first detected instance as a "first offence" ignores the extensive preparatory behaviour likely undertaken before discovery and subsequent criminal trial. First detection and the use of "first offence" is thus inaccurate and misleading in such cases and should be eliminated in relation to good character references.

Item 2: Binary use of language using terms of 'good' and 'bad'-

There is an issue that the justice system refers to a binary of good and bad character. This can prime the jury to unconsciously believe that one person is "good" and the other "bad".

Relying on this binary framework fails to acknowledge the multifaceted nature of offending, particularly in cases of sexual harm and does not accurately acknowledge the complex nature of human behaviour and can even result in DARVO attacks (standing for: deny, attack, reverse victim-offender roles) (Herman, 2003). Priming is based on unconscious and implicit

beliefs that alters the way decisions are made (Levinson, 2004).

In a court space, this can play out in the way jurors understand the issues at hand through cultural norms, suggestive language, cultural values and more (Levinson, 2004).

Presenting good character references for offenders may mislead the jury into conflating personal reputation with the likelihood of committing the offense. This misunderstanding leads to the risk of overshadowing the evidence of the crime to frame the offender as inherently "good," regardless of their predatory actions. Whereas an individual may have a positive reputation in certain aspects of their life while simultaneously engaging in criminal actions, which allows perpetrators to hide or mask their ill-intent and crimes for longer (resulting in the deferring or evasion of detection and conviction) (Crossins, 2009; Salter, 2004). Often the use of both positive engagement strategies and fear tactics ensures that victims are silenced, coerced or not believed around experiences of the harm activities (Crossins, 2009; Salter, 2004).

The binary is also confusing for jurors as often in trials victims face numerous character attacks from the defence where they can make suggestive remarks that humiliate and undermine the victims' intentions, behaviours, and overall character (Herman, 2023). This creates a double standard in which the victim's credibility is diminished while the offender's is enhanced, influencing the jury unfairly and undermining the victim's experience. As victim behaviour and sexual abuse are already widely misunderstood, this can result in jurors further placing victims in the binary category of being perceived as the 'bad' one. Thus, this binary language and either-or categorisation therefore are of benefit to offenders, where even the term of the reference being that of 'good character' already categorises the offending person as 'good', regardless of their actions.

Item 3: Perpetrator tactics unduly influencing Good Character References

The nature of perpetrator tactics may impact and influence unduly, the person's providing good character references to the courts. This can lead to unconsciously biased judicial outcomes and further detrimental effects on the victim-survivors. Grooming tactics often extend beyond the immediate victim to the offender's broader network, creating a facade of trustworthiness or instilling fear so that compliance is elicited (Herman, 2023; Salter, 2004). This can manipulate individuals into providing favourable character references, which may not reflect the offender's true nature or actions.

Those providing character references may lack awareness of the offender's criminal behaviour due to the covert nature of grooming. Their testimony is therefore based on incomplete or manipulated perceptions, making it unreliable as evidence of "good character." Grooming tactics can also be coerced from people through fear-based interactions and therefore, a person providing the reference may not be able to decline the presentation of a reference to the court.

Further, offenders may strategically foster relationships with authority figures, prestigious or trustworthy roles, or engage in community activities that assist them to secure support should accusations ever arise. These relationships are part of the offender's deliberate effort to shield themselves from suspicion and reduce accountability. Therefore, this means that the use of good character references further promotes to use of grooming, deception and coercive activities that are only of benefit to the offender of the crime/s.

Recommendations-

Given the previous information discussed in both the preliminary submission, the Consultation Paper and this response, it is therefore recommended that the NSW Sentencing Council undertakes changes to section 21A(5A) of the Crimes (Sentencing Procedure) Act 1999 (NSW), and other relevant sections, and the common law relating to the use of “good character” in sentencing. Please refer to previous recommendations in the preliminary submission (PGC20) and also consider the following reasons why good character references are no longer fit for purpose:

- The use of good character references are not in line with current trauma and abuse knowledge/research, and are therefore not considered best practice.
- the reduction of sentences based on good character references places Australian children and families at ongoing risk of violence and abuse as often offences are not “first offences” rather it is the first occasion entering the legal system.
- good-character references are an extension of the already well-researched perpetrator grooming tactics which are used to undertake sex-based grooming, abuse and other crimes. This includes coercion and/or deception of the people or organisations proving the references.
- the use of good-character references reduces the robust nature of the justice process, by further adding to the existing misunderstandings/ narratives/ biases present in Australian society around sexual abuse, trauma responses, disclosures and presentations of victim-survivors.
- The language around good character references prime the jury to use a binary categorisation for offenders and victims. This results in some biases and perceptions



that offenders may be inherently good, whilst the trial tactics of defence lawyers undermine the perception of victim-survivors which at times places them in the opposing category of ‘bad’

Please note that in line with trauma informed care principles, that process changes and reviews should be undertaken in consultations with victim-survivors, to ensure that rich data around lived experiences of violence can be embedded into reforms. If you would like to discuss any of the issues outlined in my submission further, please contact Alys McLennan of MayaKosha Healing via alys@mayakoshahealing.com

Yours sincerely,

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14 January 2025

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